PLACER COUNTY SUPERIOR COURT
CIVIL LAW AND MOTION TENTATIVE RULINGS
FRIDAY, AUGUST 28, 2020, AT 8:30 A.M.

These are the tentative rulings for civil law and motion matters set at **8:30 a.m., Friday, August 28, 2020**. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., Thursday, August 27, 2020**. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

Except as otherwise noted, these tentative rulings are issued by the **HONORABLE MICHAEL W. JONES** and if oral argument is requested, it will be heard in **Department 3**, located at **101 Maple Street, Auburn California**.

PLEASE NOTE: TELEPHONIC APPEARANCE IS REQUIRED FOR ALL CIVIL LAW AND MOTION MATTERS. (Emergency Local Rule 10.28; see also Local Rule 20.8.) More information is available at the court's website: www.placer.courts.ca.gov.

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1. M-CV-0074977 Wells Fargo Bank, N.A. vs. Martinez, Christina R.

Plaintiff's motion to deem requests for admissions admitted is continued to September 18, 2020, at 8:30 a.m. in Department 3. Plaintiff's notice of motion does not include the tentative ruling advisement as required by Local Rule 20.2.3(C)(1). Plaintiff shall serve defendant with notice of the continued hearing date, which must include the required tentative ruling advisement.

2. S-CV-0037599 Thomas, Tiana vs. Landry's Inc., et al

The reserved hearing date is dropped as no moving papers were filed with the court.

3. S-CV-0040629 Scheiber Ranch Properties, LP vs. City of Lincoln

This tentative ruling is issued by the Honorable Charles D. Wachob:

Motion for New Trial

Appearance required at 9:00 a.m. in Department 42.

4. S-CV-0042129 Michael, Jerry A. vs. FCA US LLC, et al

Plaintiff's motion to compel deposition and motion to compel further responses to request for production of documents are continued to September 18, 2020, at 8:30 a.m. in Department 3, to be heard in conjunction with plaintiff's motion to compel further responses to requests for admissions.

5. S-CV-0042543 De Lara, Guadalupe Esparza vs. La Familia Ramirez, Inc.

Motion for Summary Judgment

Rulings on Objections

Defendant's objections to evidence are ruled on as follows: Objection Nos. 1, 3, 4 and 8 are sustained. The remaining objections are overruled.

Defendant's objection to the declaration of Mark Blanchette, PhD, in its entirety, is overruled. The alternative objections are ruled on as follows: Objection Nos. 1, 3, 4, 5, 6, 8 and 9 are sustained. The remaining objections are overruled.

Plaintiff's objections to the declaration of Jordan Meeks are ruled on as follows: Objection No. 2 is sustained. The remaining objections are overruled.

Ruling on Motion

Defendant La Familia Ramirez, Inc. dba Café Delicias moves for summary judgment as to plaintiff's negligence/premises liability claim arising from a slip-and-fall accident at defendant's restaurant.

The court shall grant a motion for summary judgment if "all the papers submitted show that there is no triable issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Code Civ. Proc. § 437c(c). In reviewing a motion for summary judgment, the court must view the supporting evidence, and inferences reasonably drawn from such evidence, in the light most favorable to the opposing party. *Aguilar v. Atlantic Richfield Company* (2001) 25 Cal.4th 826, 843. The moving defendant has the initial burden of showing that a cause of action has no merit or there is a complete defense to the cause of action. Code Civ. Proc. § 437c(p)(2).) Once the defendant meets this initial burden, the burden then shifts to the plaintiff to show that a triable issue of material fact exists as to the cause of action or a defense to the cause of action. *Id.*

In the current motion, defendant challenges plaintiff's ability to establish either the existence of a dangerous condition, or the fact that defendant had actual and/or constructive knowledge of the dangerous condition. An owner of property is liable for harm caused by a dangerous condition where the owner had actual or constructive knowledge of the condition. *Ortega v. Kmart Corp.* (2001) 26 Cal.4th 1200, 1205. An

owner can be shown to have actual or constructive notice of a defect where the hazardous condition existed long enough for the owner to discover the condition by exercising reasonable care. *Id*. at pp. 1210-1213. Defendant has met its initial burden here by presenting evidence that no dangerous condition existed which caused plaintiff to fall, as well as evidence that defendant lacked actual and constructive notice regarding the existence of any purported dangerous condition. (Deft. SSUMF 4-8.) The burden thus shifts to plaintiff to establish a triable issue of material fact.

Plaintiff, however, has not presented evidence to create a triable issue of material fact. Plaintiff does not claim that any water, food, foreign objects, or debris caused her fall. Plaintiff instead asserts that her fall was caused by the presence of a purportedly slippery Corona de Mayo floor sticker in an area of the restaurant where the floor slopes slightly. (SSUMF 2.) As evidence both of the existence of a dangerous condition, and defendant's knowledge of the same, plaintiff submits her own deposition testimony, wherein she testified that two employees of defendant told her at the time of the accident, and shortly thereafter, that there had been prior falls in the same area, that the owner was advised of the falls, but did nothing about it. Plaintiff's testimony about statements by third parties, submitted for the truth of those statements, is inadmissible hearsay, and cannot be considered by the court in ruling on the motion. Similarly, plaintiff's testimony that she heard three female patrons of the restaurant discussing prior falls, and that "they've never done anything about it" is inadmissible hearsay.

Plaintiff also points to the deposition testimony of Eduardo Bello, one of the individuals who purportedly told plaintiff that there had been prior falls in the same location. Mr. Bello's deposition testimony does not confirm the purported statements he made to plaintiff. Mr. Bello testified to knowledge of only one prior fall in the same area approximately five years earlier, when a little girl fell while running. (Deposition of Eduardo Bello at 15:2-13.) Given the lack of information about what may have caused the fall, other than the fact that the girl was running at the time, this testimony is insufficient to create a reasonable inference that a dangerous condition existed, of which defendant had notice.

Finally, plaintiff relies on the declaration of her expert witness, Mark Blanchette, PhD. However, Mr. Blanchette's testimony fails to create a triable issue of fact. Mr. Blanchette relies on the inadmissible hearsay evidence in plaintiff's deposition testimony, as to what she heard about prior incidents in the same location, in order to arrive at the conclusion that there were multiple prior slip events. (Declaration of Mark Blanchette, ¶ 13.) Under *People v. Sanchez* (2016) 63 Cal.4th 665, although an expert may rely on hearsay, the record before the court must contain admissible evidence of the case-specific facts on which the expert relies. In this case, the record contains no admissible evidence of prior incidents. Mr. Blanchette goes on to use the assumption of multiple slip events to conclude that "the sticker was at one time slippery", even though at the time he inspected the sticker, approximately three years after plaintiff's fall, it did not test slippery. (Id.) While Mr. Blanchette also notes the downward slope in the location of the sticker, he concludes that "the floor slope alone cannot explain the multiple slip events." (Id.)

In the opposition, plaintiff accuses defendant of materially altering the flooring, and destroying evidence, by placing hardwood over the sticker in the area where plaintiff fell. Plaintiff submits no evidence in support of the claim that evidence was intentionally destroyed. In his declaration, Mr. Blanchette states that at the time of his inspection, "laminate flooring had been laid over the carpet and Corona de Mayo floor sticker areas." (Declaration of Mark Blanchette, ¶ 9.) The laminate flooring was removed prior to completion of the inspection. (Id., ¶ 10.) Mr. Blanchette, comparing a photograph of the area in question taken shortly after the incident and a photograph taken at the time of the inspection, notes "a significantly larger and more pronounced area of white on the sticker at the time of my inspection" which he states "is due to wear". (Id., ¶ 12.) Mr. Blanchette does not opine, nor is there any other evidence to show, that placement of a removable laminate floor covering on top of the sticker contributed to the "wear" that was observed three years after the incident.

Plaintiff fails to present sufficient evidence to establish a triable issue of material fact as to the presence of a dangerous condition, or defendant's actual or constructive knowledge of a dangerous condition. Accordingly, the motion for summary judgment is granted.

6. S-CV-0042739 Kanaan Investments, LLC vs. ISR Holdings, Inc., et al

Plaintiff Kanaan Investments, LLC's motion to compel discovery responses, and to deem requests for admissions admitted, is granted.

Defendant ISR Holdings, Inc. shall serve verified responses, without objections, to plaintiff's Form Interrogatories, Set One, and Requests for Production of Documents, Set One, on or before September 7, 2020.

Plaintiff's Requests for Admissions, Set One, are deemed admitted by defendant ISR Holdings, Inc.

Plaintiff is awarded sanctions from defendant ISR Holdings, Inc. and its counsel, jointly and severally, in the amount of $600.

7. S-CV-0042787 Golson, Charles B., et al vs. Cross, Bethany Barry, et al

The motion to compel deposition is continued to September 18, 2020, at 8:30 a.m. in Department 3.

8. S-CV-0042807 Haium, Jeff, et al vs. Hall, Margaret Traina
S-CV-0042835 Dougan, Suchada et al vs. Hall, Margaret Traina

The motion to consolidate is granted. Placer County Superior Court Case No. SCV-42807, *Jeff Haium, et al. vs. Margaret Traina Hall*, shall be consolidated with Placer County Superior Court Case No. SCV-42835, *Suchada Dougan, et al. vs. Margaret Traina Hall*. Case No. SCV-42807 shall be the lead case. Cal. R. Ct., rule 3.350(b).

9. S-CV-0043241 Garcia, Martin, et al vs. Ben Evans, Inc.

The motion for preliminary approval of class action settlement was continued to October 2, 2020, at 8:30 a.m. in Department 3.

10. S-CV-0043539 Henderson, John P. vs. Nau, Paul E. Jr.

Motion for Summary Judgment

Preliminary Matters

This court notes with disapproval the tone and language throughout opposing defendant's declaration, filed August 14, 2020, attacking the actions and integrity of the court. It is apparent that defendant does not comprehend that his manner of practicing law is totally at odds with the professional standards outlined in the State Bar Guidelines of Civility and Professionalism and the standards of the State of California.

The court recognizes and respects the importance of zealous advocacy, while realizing that there is an important, albeit hazy, line between effective advocacy and improper behavior. California case law authority, the Business and Professions Code, and State Bar Guidelines of Civility and Professionalism all forbid attorneys from discourteous conduct or other affronts upon the dignity of the court. Vigorous advocacy does not necessitate belligerence toward the court. *See, e.g., Panzardi-Alvarez v. United States* 875 F.2d 975, 980 (1st Cir. 1989).

The constant barrage of unrestrained personal abuse and attacks upon the judiciary and specifically the Placer County judiciary is harmful to the administration of justice. Our Supreme Court has cautioned that it is a violation of professional standards for counsel to indulge in offensive and demeaning remarks about judges in a spirit of reckless disregard for the truth. *Ramirez v. State Bar* (1980) 28 Cal.3d 402, 411. Pro per litigants are held to the same standards as attorneys. *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 985. The rules of professional conduct, to the extent they govern conduct in the course of the litigation, apply equally to pro per litigants who act as their own attorneys. *Kobayashi v. Superior* Court (2009) 175 Cal.App.4th 536, 543. While a pro per litigant may not be subject to State Bar disciplinary action, he can and will be monetarily sanctioned under such circumstances.

Acrimonious brief writing disparaging the intelligence, ethics, morals and integrity of the court and judges is a manifestation of incivility. The fact that defendant is self-represented does not give him freedom to engage in the type of unwarranted ad hominem attacks on the character or motives of the opposing party, or the court, that attorneys are prohibited from making. It should be remembered that the sarcastic tone and demeaning comments made by defendant in his declaration are being made in a court of law. Such comments are improper and not at all helpful to the court in considering the legal issues presented. Defendant is cautioned not to present this type of argument to the court in the future.

Ruling on Motion

Plaintiff John Henderson moves for summary judgment.

The party seeking summary judgment bears the burden of showing there is no triable issue of material fact and that the party is entitled to judgment as a matter of law. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850. If the moving party carries its initial burden of production to make a prima facie showing that there are no triable issues of material fact, the burden shifts to the opposing party to make a prima facie showing of the existence of a triable issue of material fact. *Id.*

This motion initially came up for hearing on May 29, 2020. Plaintiff submitted evidence establishing an agreement to provide legal services to defendant Paul Nau. (Pltf. SSUMF 1.) In accordance with the agreement, plaintiff sent defendant monthly billing statements which detailed the services provided, the time expended, the costs incurred, and the balance due. (Pltf. SSUMF 4.) Defendant made some payments on the billing statements, but as of September 1, 2018, had not paid amounts due and owing totaling $43,325.23. (Pltf. SSUMF 6.) Plaintiff consequently filed the instant action, alleging claims of unjust enrichment, breach of contract, account stated and quantum meruit.

In advance of the May 29, 2020 hearing, defendant submitted no admissible evidence in opposition to the motion. On May 18, 2020, defendant filed several unverified statements which were unsupported by evidence. Defendant also filed a request for a continuance, but failed to satisfy the requirements of Code of Civil Procedure section 437c(h) by showing *by declaration* that essential evidence "may exist but cannot, for reasons stated, be presented". Code Civ. Proc. § 437c(h); *Bahl v. Bank of America* (2001) 89 Cal.App.4th 389, 395; *Combs v. Skyriver Communications, Inc.* (2008) 159 Cal.App.4th 1242, 1270. The court issued a tentative ruling to grant plaintiff's motion for summary judgment, and to deny defendant's request for a continuance.

Defendant requested oral argument. At the hearing, defendant identified additional information in support of his request for a continuance. (See generally, Reporter's Transcript on Motion for Summary Judgment, dated May 29, 2020.) Based upon this additional information, the court exercised its discretion to grant defendant's request for a continuance. (See Ruling on Submitted Matter, filed June 15, 2020.)

Defendant filed a declaration in support of his opposition on August 14, 2020. Much of the declaration details information that is irrelevant to the current motion, specifically related to litigation which predates the attorney-client relationship at issue in this action. Defendant concludes that adverse rulings against him were the result of errors of law, abuse of power, corruption and conspiracy by the various individuals involved in the underlying actions including a former arbitrator, judge, opposing counsel, and opposing parties. With respect to the subsequent litigation in this court for which he retained plaintiff to represent him, defendant continues to blame corrupt judges, manipulative opposing counsel, the alleged incompetence of his own counsel, and the "lawless State" of California for his failure to prevail. Defendant's accusations also reach rulings in the

current action, where defendant asserts that it was another judicial officer's desire to "perpetuate[] the travesty railroading", as opposed to defendant's own failure to comply with the law, that led to an earlier (unadopted) tentative ruling which denied his request for a continuance, described above. In any event, these accusations are for the most part completely irrelevant to the current motion.

The court notes that defendant has also failed to include a separate statement responding to each of the material facts that plaintiff contends are undisputed. While the court has discretion to grant plaintiff's motion for this reason alone, the court has determined that it will consider defendant's declaration to determine whether he has established a triable issue of material fact. Code Civ. Proc. § 437c(b)(3). In ruling on the motion, the court must consider all of the evidence and all of the inferences reasonably drawn therefrom, and must view the evidence and inferences "in the light most favorable to the opposing party." Code Civ. Proc. § 437c(c); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843. The court's function in ruling on the motion is to ascertain from the evidence whether an issue of material fact exists, and if there is a single such issue, the motion must be denied. *Versa Tech., Inc. v. Superior Court* (1978) 78 Cal.App.3d 237, 240.

In this case, the court finds that defendant's declaration contains evidence which establishes a triable issue of material fact, precluding the granting of the motion. Specifically, defendant states facts which, if proven, may establish breaches of his former attorney's duties of professional responsibility to his client, including the failure to communicate, the failure to keep defendant reasonably apprised of the events of the litigation, and misrepresentations of events occurring at trial. "Fraud or unfairness on the part of the attorney will prevent him from recovering for services rendered; as will acts in violation or excess of authority, and acts of impropriety, inconsistent with the character of the profession, and incompatible with the faithful discharge of its duties.' [Citation.]" *Clark v. Millsap* (1926) 197 Cal. 765, 785. While defendant's declaration does not suggest fraud by plaintiff, he does describe breaches of duty which may constitute acts "inconsistent with the character of the profession" or "incompatible with the faithful discharge" of the attorney's duties. Such acts may support a factfinder's determination that plaintiff is not entitled to all fees billed to the client. Plaintiff has the burden of establishing each element of his cause of action, including the amount of damages. Code Civ. Proc. § 437c(p)(1).

Based on the foregoing, plaintiff's motion for summary judgment is denied.

Defendant's request for an award of damages is denied, as there is no basis for any such award. A litigant has a right to act as his own attorney, "but, in so doing, should be restricted to the same rules of evidence and procedure as is required of those qualified to practice law before our courts; otherwise, ignorance is unjustly rewarded." *Lombardi v. Citizens Nat. Trust etc. Bank* (1955) 137 Cal.App.2d 206, 208-209. Pro per status does not exempt a litigant from rules of procedure. *Harding v. Collazo* (1986) 177 Cal.App.3d 1044, 1056. Defendant is advised to comply with lawful procedure and rules on any future submissions to the court.

11. S-CV-0044353 Mangune, Anabelle G. vs. Cline, Elizabeth A., et al

Plaintiff's motion for quiet title judgment is denied. Pursuant to Code of Civil Procedure section 764.010, live testimony is required at a default prove-up hearing of a quiet title action.

The court sets a default prove-up hearing for October 6, 2020, at 8:30 a.m. in Department 40.

Please note that live remote video appearance is currently mandatory for all default prove-up hearings. More information is available at the court's remote appearance website: www.placer.courts.ca.gov/RAS.shtml.

12. S-CV-0044667 Hase, Scott vs. Ford Motor Company

Defendant's request for judicial notice is granted.

Defendant Ford Motor Company demurs to each cause of action alleged in plaintiff Scott Hase's first amended complaint. A party may demur where the pleading does not state facts sufficient to constitute a cause of action. Code Civ. Proc. § 430.10(e). A demurrer tests the legal sufficiency of the pleadings, not the truth of the allegations or the accuracy of the described conduct. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787. The allegations in the pleadings are deemed true no matter how improbable they may seem. *Del E. Webb Corp. v. Structural Materials Co*. (1981) 123 Cal.App.3d 593, 604.

Plaintiff's first and third causes of action allege breach of express warranty under the Magnusson-Moss Warranty Act and the Song-Beverly Consumer Warranty Act, respectively. Both claims are subject to a four-year statute of limitations. Uniform Commercial Code § 2725; *Krieger v. Nick Alexander Imports, Inc.* (1991) 234 Cal.App.3d 205, 215. Plaintiff alleges that he purchased his vehicle on September 8, 2007, and that defects arose during the warrantable period. (FAC, ¶¶ 3, 10.) Plaintiff alleges that defendant was provided sufficient opportunities to repair the vehicle, but failed to do so within a reasonable number of attempts. (Id., ¶¶ 12, 13.)

The longest warranty period applicable to plaintiff's purchase of his vehicle is five years. (RJN, Exh. A.) Where a warranty explicitly extends to future performance of goods, a claim for breach of the warranty accrues when the breach is discovered, or should have been discovered. Uniform Commercial Code § 2725(1), (2); *Mills v. Forestex* (2003) 108 Cal.App.4th 625, 642; *Ehrlich v. BMW of North America, LLC* (C.D. Cal. 2010) 801 F. Supp.2d 908, 925.

In order to sustain a demurrer based on the statute of limitations, the running of the statute must appear "clearly and affirmatively" from the face of the complaint. *Committee for Green Foothills v. Santa Clara County Board of Supervisors* (2010) 48 Cal.4th 32, 42. In this case, the allegations of the first amended complaint do not

establish "clearly and affirmatively" that plaintiff discovered the failure to conform the vehicle to the warranty more than four years prior to the filing of the complaint. Accordingly, the demurrer is overruled as to the first and third causes of action.

Plaintiff's second and fourth causes of action allege breach of implied warranty under the Magnusson-Moss Warranty Act and the Song-Beverly Consumer Warranty Act, respectively. These claims are also subject to a four-year statute of limitations. Uniform Commercial Code section 2725; *Krieger v. Nick Alexander* Imports (1991) 234 Cal.App.3d 205, 215.

A breach of warranty occurs "when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered." Uniform Commercial Code section 2725(1), (2). However, an implied warranty by its definition cannot expressly extend to future performance. *See Cardinal Health v. Tyco Electronics Corp.* (2008) 169 Cal.App.4th 116, 134. The "future performance" exception has been narrowly construed, and "applies only when the seller has expressly agreed to warrant its product *for a specific and defined period of time.*" *Id.* at 130 (emph. in orig.) The implied warranty arises by operation of law, not by express agreement. Civ. Code § 1791.1(a).

Mexia v. Rinker Boat Co., Inc. (2009) 174 Cal.App.4th 1297, cited by plaintiff, does not support the argument that plaintiff's claim accrued only upon discovery of the latent defect. In *Mexia*, the Court of Appeal held that the Song-Beverly Act did not bar an action for breach of implied warranty based upon a latent condition not discovered by the consumer and reported to the seller within the duration period. *Id.* at 1309. The duration of the implied warranty of merchantability provided for in the Magnuson Moss Warranty Act and the Song-Beverly Act Consumer Warranty Act is no more than one year from delivery of the vehicle. Civ. Code §§ 1791.1(c), 1793.1. The court in *Mexia* made clear that the product was "rendered unmerchantable, and the warranty of merchantability [was] breached, by the existence of the unseen defect, not by its subsequent discovery." *Id.* at 1305. While the *Mexia* court noted that the breach of implied warranty could potentially occur after the sale, and prior to expiration of the duration period, the complaint in that case alleged that the latent defects existed at the time plaintiff acquired the boat. Further, the plaintiff in *Mexia* filed his action three years and seven months after the purchase. Therefore, the appellate court concluded, "Mexia's action is not barred by the statute of limitations." *Mexia v. Rinker Boat Co., Inc., supra,* 174 Cal.App.4th at 1306.

Plaintiff's complaint alleges that the alleged defects existed at the time of delivery. (Complaint, ¶¶ 8,9.) Accordingly, breach of the implied warranty of merchantability occurred at the time of delivery. Plaintiff purchased the subject vehicle on September 8, 2007. (FAC, ¶ 3.) The action was not filed until March 26, 2020, more than four years after the sale. Pursuant to Commercial Code section 2725, plaintiff's claim for breach of the implied warranty of merchantability is barred by the applicable statute of limitations, unless an exception applies, such as the discovery rule. To plead the discovery rule,

plaintiff must allege specific facts showing (1) the time and manner of the discovery; and (2) the inability to have made earlier discovery despite reasonable diligence." *Fox v. Ethicon Endo-Surgery, Inc.*, *supra*, 35 Cal.4th at 808. Plaintiffs must show diligence, and cannot rely on conclusory allegations. In this case, the allegations of the first amended complaint are insufficient to invoke the discovery rule. Accordingly, the demurrer is sustained as to the second and fourth causes of action fore breach of implied warranty.

Plaintiff is granted leave to amend. Any amended complaint shall be filed and served on or before September 18, 2020.

13. S-CV-0044833 Harding, Patrick vs. General Motors LLC

The demurrer to complaint and motion to strike are continued to September 18, 2020, at 8:30 a.m. in Department 3.

14. S-CV-0044835 Mattson, Monte D. vs. Parisi & Powell, et al

The application for right to attach order and writ of attachment, and motion to strike, are dropped in light of defendant Parisi & Powell, dba PRD Construction's representation that it filed for Chapter 11 bankruptcy on or about August 4, 2020.

The court sets an OSC re Status of Bankruptcy on March 30, 2021, at 11:30 a.m. in Department 40.
